

NO JS-6

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

IN RE NEW CENTURY

Case No. CV 07-00931 DDP (FMOx)  
(Lead Case)

**UNDERWRITER DEFENDANTS FINAL JUDGMENT AND  
ORDER OF DISMISSAL WITH PREJUDICE**

1 This matter came before the Court for hearing pursuant to the Order  
 2 Preliminarily Approving Settlements and Providing for Notice (“Preliminary  
 3 Approval Order” or “Notice Order”), on the application of Lead Plaintiff New  
 4 York State Teachers’ Retirement System (“Lead Plaintiff”) and Plaintiffs Carl  
 5 Larson and Charles Hooten (collectively “Plaintiffs”) for approval of the  
 6 settlement between Plaintiffs and the Underwriter Defendants set forth in the  
 7 Stipulation Of Settlement Between Plaintiffs And The Underwriter Defendants  
 8 (the “Underwriter Stipulation” or “Underwriter Settlement”). Full and adequate  
 9 notice having been given to the Class as required in the Court’s Order, and the  
 10 Court having considered all papers filed and proceedings held herein and otherwise  
 11 being fully informed in the premises and good cause appearing therefor,

12 NOW, THEREFORE, IT IS HEREBY ORDERED THAT:

13 1. This Judgment incorporates by reference the definitions in the  
 14 Underwriter Stipulation, and all capitalized terms used, but not defined herein,  
 15 shall have the same meanings as in the Underwriter Stipulation.

16 2. This Court has jurisdiction over the subject matter of the Consolidated  
 17 Action and over all Parties to the Consolidated Action, including all members of  
 18 the Class.

19 3. The Court hereby affirms its certification in the Preliminary Approval  
 20 Order pursuant to Rules 23(a) and 23(b)(3) of the Federal Rules of Civil  
 21 Procedure, of a Class defined as follows:

22 all persons and entities who purchased or otherwise acquired New  
 23 Century common stock, New Century Series A Preferred Stock, New  
 24 Century Series B Preferred Stock, and/or New Century call options  
 25 and/or who sold New Century put options, during the time period  
 26 from May 5, 2005, through and including March 13, 2007, either in  
 27 the Offerings, pursuant to a registration statement, or in the market,  
 28 and who, upon disclosure of certain facts alleged in the Complaint,  
 were injured thereby. Excluded from the Class are (a) Defendants; (b)  
 members of the immediate families of the Individual Defendants; (c)  
 the subsidiaries and affiliates of Defendants; (d) any person or entity  
 who was a partner, executive officer, director or controlling person of  
 New Century (including any of its subsidiaries or affiliates) or of any  
 Defendant; (e) any entity in which any Defendant has a controlling  
 interest; and (f) the legal representatives, heirs, successors and assigns

1 of any such excluded party. Also excluded from the Class are any  
2 persons who exclude themselves by filing a request for exclusion in  
3 accordance with the requirements set forth in the Notice, as listed on  
4 Exhibit 1 annexed hereto.

4. The Court also affirms its findings in the Preliminary Approval Order  
5 that the prerequisites for a class action under Rules 23(a) and (b)(3) of the Federal  
6 Rules of Civil Procedure have been satisfied in that: (a) the number of Class  
7 Members is so numerous that joinder of all members thereof is impracticable; (b)  
8 there are questions of law and fact common to the Class; (c) the claims of New  
9 York State Teachers' Retirement System ("NYSTRS") and Plaintiffs Carl Larson  
10 and Charles Hooten are typical of the claims of the Class they seek to represent; (d)  
11 Plaintiffs have fairly and adequately represented the interests of the Class; (e) the  
12 questions of law and fact common to the members of the Class predominate over  
13 any questions affecting only individual members of the Class; and (f) a class action  
14 is superior to other available methods for the fair and efficient adjudication of the  
15 controversy.

5. Pursuant to Rule 23 of the Federal Rules of Civil Procedure, the  
16 Court affirms its certification of Plaintiffs as Class Representatives and Lead  
17 Counsel Bernstein Litowitz Berger & Grossmann LLP as Class Counsel.

6. Pursuant to Federal Rule of Civil Procedure 23, this Court hereby  
19 approves the Underwriter Settlement set forth in the Underwriter Stipulation and  
20 finds that the Underwriter Settlement is, in all respects, fair, reasonable, and  
21 adequate to the Lead Plaintiff, the Class and each of the Class Members. The  
22 Court further finds that the Underwriter Settlement set forth in the Underwriter  
23 Stipulation is the result of arm's-length negotiations between experienced counsel  
24 representing the interests of the Parties. Accordingly, the Underwriter Settlement  
25 embodied in the Underwriter Stipulation is hereby finally approved in all respects.  
26 The Parties are hereby directed to perform its terms.

7. Pursuant to and in compliance with Rule 23 of the Federal Rules of

1 Civil Procedure, the Court hereby finds that due and adequate notice of these  
2 proceedings was directed to all persons and entities who are Class Members,  
3 advising them of the Underwriter Settlement, the Plan of Allocation, and Lead  
4 Counsel's intent to apply for attorneys' fees and reimbursement of Litigation  
5 Expenses associated with the Consolidated Action, and of their right to object  
6 thereto, and a full and fair opportunity was accorded to all persons and entities  
7 who are Class Members to be heard with respect to the foregoing matters. Thus, it  
8 is hereby determined that all Class Members who did not timely and properly elect  
9 to exclude themselves by written communication postmarked or otherwise  
10 delivered on or before the date set forth in the Notice and the Preliminary  
11 Approval Order, are bound by this Judgment.

12 8. The Consolidated Action and all claims contained therein are  
13 dismissed with prejudice as to the Underwriter Defendants. The parties are to bear  
14 their own costs, except as otherwise provided in the Underwriter Stipulation.

15 9. Upon the Effective Date, Plaintiffs and members of the Class, on  
16 behalf of themselves, their parent companies, subsidiaries, affiliates, heirs,  
17 executors, administrators, predecessors, successors and assigns, and any and all of  
18 their current and former officers, directors, employees, agents and attorneys shall  
19 be deemed by operation of law to have released, waived, discharged and dismissed  
20 each and every Settled Claim, and shall forever be enjoined from prosecuting any  
21 or all Settled Claims, against any Released Underwriter Party.

22 10. Upon the Effective Date, the Underwriter Defendants and each of the  
23 other Released Underwriter Parties, on behalf of themselves, their parent  
24 companies, subsidiaries, affiliates, heirs, executors, administrators, predecessors,  
25 successors and assigns, and any and all of their current and former officers,  
26 directors, employees, agents and attorneys shall be deemed by operation of law to  
27 have released, waived, discharged and dismissed each and every one of the  
28 Released Parties' Claims, and shall forever be enjoined from prosecuting any or all

1 of the Released Parties' Claims, against Plaintiffs and their employees, agents and  
2 attorneys, and all other Class Members.

3 11. Upon the Effective Date, and conditioned on the Underwriter Defendants and  
4 the other Released Underwriter Parties receiving substantively reciprocal releases from the  
5 Settling Individuals, the Underwriter Defendants and the other Released Underwriter  
6 Parties shall be deemed by operation of law to have released, waived, discharged  
7 and dismissed, and shall forever be enjoined from prosecuting, all Claims Against  
8 Officers And Directors against any of the Settling Individuals.

9 12. Pursuant to the Underwriter Judgment, upon the Effective Date, and  
10 conditioned on the Underwriter Defendants and the other Released Underwriter  
11 Parties receiving substantively reciprocal releases from KPMG and the Released  
12 Auditor Parties, the Underwriter Defendants and the other Released Underwriter  
13 Parties shall be deemed by operation of law to have released, waived, discharged  
14 and dismissed each and every claim, and shall forever be enjoined from  
15 prosecuting any claim, against KPMG and the Released Auditor Parties arising  
16 under federal, state, common or foreign law, arising out of or based upon the  
17 allegations, transactions, facts, matters or occurrences, representations or  
18 omissions involved, set forth, or referred to in the Consolidated Action.

19 13. Upon the Effective Date, this Final Judgment And Order Of  
20 Dismissal With Prejudice constitutes the final discharge of all obligations to the  
21 Plaintiffs of the Underwriter Defendants arising out of the Consolidated Action.  
22 All future claims for contribution arising out of the Consolidated Action by any  
23 person or entity against the Underwriter Defendants or by the Underwriter  
24 Defendants against any other person or entity, other than a person whose liability  
25 has been extinguished by this Settlement, are barred pursuant to 15 U.S.C. § 78u-  
26 4(f)(7)(A).

27 14. The distribution of the Notice of Pendency of Class Action and  
28 Proposed Settlement. Settlement Fairness Hearing and Motion for Attorneys' Fees

1 and Reimbursement of Expenses (“Notice”) and the publication of the Summary  
2 Notice as provided for in the Preliminary Approval Order constituted the best  
3 notice practicable under the circumstances, including individual notice to all  
4 members of the Class who could be identified through reasonable effort. Said  
5 notice provided the best notice practicable under the circumstances of those  
6 proceedings and of the matters set forth therein, including the proposed  
7 Underwriter Settlement set forth in the Underwriter Stipulation, to all persons  
8 entitled to such notice, and said notice fully satisfied the requirements of Federal  
9 Rule of Civil Procedure 23, the Private Securities Litigation Reform Act of 1995,  
10 due process, and any other applicable law.

11 15. The Court hereby finds and concludes that the formula for the  
12 calculation of the claims which is set forth in the Plan of Allocation proposed by  
13 Lead Plaintiff provides a fair and equitable basis upon which to allocate the  
14 proceeds of the Settlements<sup>1</sup> among the Class Members with due consideration  
15 having been given to administrative convenience and necessity.

16 16. The Court hereby finds and concludes that the Plan of Allocation  
17 proposed by Lead Plaintiff is, in all respects, fair and equitable to the Class.  
18 Accordingly, the Court hereby approves the Plan of Allocation proposed by Lead  
19 Plaintiff.

20 17. Any order entered regarding any attorneys’ fees and for expense  
21 application shall in no way disturb or affect this Final Judgment And Order Of  
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23 <sup>1</sup> “Settlements” herein includes the settlements as set forth in the Underwriter  
24 Stipulation, the Stipulation of Settlement Between Plaintiffs and KPMG LLP  
25 (“KPMG Settlement” or “KPMG Stipulation”), and the Stipulation of Global  
26 Settlement with New Century Officer and Directors (“Global Officer And Director  
27 Settlement” or “Global Officer And Director Stipulation”) (collectively  
28 “Settlements” or “Stipulations”). The Plan of Allocation sets forth a plan for  
allocating to Class Members the funds allocated to the Class from all three of the  
Settlements.

1 Dismissal With Prejudice and shall be considered separate from this Final  
2 Judgment And Order Of Dismissal With Prejudice.

3 18. The Underwriter Stipulation and Underwriter Settlement set forth  
4 therein, whether or not consummated, and any proceedings taken pursuant to it:

5 a. shall not be offered or received against any of the Released  
6 Underwriter Parties as evidence of, or construed as, or deemed to be evidence of  
7 any presumption, concession, or admission by any of the Released Underwriter  
8 Parties with respect to the truth of any fact alleged by Plaintiffs or the validity of  
9 any claim that was or could have been asserted against any of the Released  
10 Underwriter Parties in this Consolidated Action or in any litigation, or of any  
11 liability, negligence, fault, or other wrongdoing of any kind of any of the Released  
12 Underwriter Parties;

13 b. shall not be offered or received against any of the Released  
14 Underwriter Parties as evidence of a presumption, concession or admission of any  
15 fault, misrepresentation or omission with respect to any statement or written  
16 document approved or made by any of the Released Underwriter Parties, or against  
17 the Plaintiffs or any Class Members as evidence of any infirmity in the claims of  
18 Plaintiffs or the other Class Members;

19 c. shall not be offered or received against any of the Released  
20 Underwriter Parties, or against the Plaintiffs or any other Class Members, as  
21 evidence of a presumption, concession or admission with respect to any liability,  
22 negligence, fault or wrongdoing of any kind, or in any way referred to for any  
23 other reason as against any of the Released Underwriter Parties, in any other civil,  
24 criminal or administrative action or proceeding, other than such proceedings as  
25 may be necessary to effectuate the provisions of this Stipulation; provided,  
26 however, that if this Stipulation is approved by the Court, Underwriter Defendants,  
27 any other Released Underwriter Party, or any Class Member may refer to it to  
28 effectuate the protection from liability granted them hereunder;



1           d.     shall not be construed against any of the Released Underwriter  
2 Parties, Plaintiffs or any other Class Members as an admission, concession, or  
3 presumption that the consideration to be given hereunder represents the amount  
4 which could be or would have been recovered after trial;

5           e.     shall not be construed against Plaintiffs or any other Class  
6 Members as an admission, concession, or presumption that any of their claims are  
7 without merit or that damages recoverable under the Complaint would not have  
8 exceeded the Underwriter Settlement Amount; and

9           f.     shall not be construed as or received in evidence as an  
10 admission, concession or presumption that class certification is appropriate in this  
11 Consolidated Action, except for purposes of this Underwriter Settlement.

12         19.    The Underwriter Stipulation may be filed in an action to enforce or  
13 interpret the terms of the Underwriter Stipulation, the Underwriter Settlement  
14 contained therein, and any other documents executed in connection with the  
15 performance of the agreements embodied therein. The Released Underwriter  
16 Parties and/or any Class Member may file the Stipulation and/or this Final  
17 Judgment And Order Of Dismissal With Prejudice in any action that may be  
18 brought against them in order to support a defense or counterclaim based on the  
19 principles of *res judicata*, collateral estoppel, full faith and credit, release, good  
20 faith settlement, judgment bar, or reduction or any other theory of claim preclusion  
21 or issue preclusion or similar defense or counterclaim.

22         20.    Without affecting the finality of this Final Judgment And Order Of  
23 Dismissal With Prejudice in any way, this Court hereby retains continuing  
24 jurisdiction over: (a) implementation of this Underwriter Settlement and any award  
25 or distribution of the Settlement Fund. including interest earned thereon; (b) the  
26 allowance, disallowance or adjustment of any Class Member's claim on equitable  
27 grounds and any award or distribution of the Settlement Fund; (c) disposition of  
28 the Settlement Fund; (d) hearing and determining applications for attorneys' fees



1 and Litigation Expenses in the Consolidated Action; (e) enforcing and  
2 administering this Judgment; (f) all parties hereto for the purpose of construing,  
3 enforcing and administering the Underwriter Stipulation; and (g) other matters  
4 related or ancillary to the foregoing.

5 21. The Court finds that during the course of the Consolidated Action, the  
6 Parties and their respective counsel at all times complied with the requirements of  
7 Federal Rule of Civil Procedure 11.

8 22. In the event that the Underwriter Settlement does not become  
9 effective in accordance with the terms of the Underwriter Stipulation or the  
10 Effective Date does not occur, or in the event that the Settlement Fund, or any  
11 portion thereof, is returned to the Underwriter Defendants, then this Final  
12 Judgment And Order Of Dismissal With Prejudice shall be rendered null and void  
13 to the extent provided by and in accordance with the Underwriter Stipulation and  
14 shall be vacated and, in such event, all orders entered and releases delivered in  
15 connection herewith shall be null and void to the extent provided by and in  
16 accordance with the Underwriter Stipulation.

17 23. Without further Order of the Court, the parties may agree to  
18 reasonable extensions of time to carry out any of the provisions of the Underwriter  
19 Stipulation.

20 24. There is no just reason for delay in the entry of this Judgment and  
21 immediate entry by the Clerk of the Court is expressly directed.

22 IT IS SO ORDERED,

23  
24 DATED: November 15, 2010



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26  
27 THE HONORABLE DEAN D. PREGERSON  
28 UNITED STATES DISTRICT JUDGE